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4 UNITED STATES DISTRICT COURT
5 NORTHERN DISTRICT OF CALIFORNIA

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7 MICHAEL EUGENE WYATT,
8 Plaintiff,
9 v.
10 JOHN SUTTON,
11 Defendant.

Case No. [18-cv-06588-PJH](#)

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13 ORDER FOR RESPONDENT TO
14 SHOW CAUSE

15 Petitioner, a California prisoner, filed a pro se petition for a writ of habeas corpus
16 pursuant to 28 U.S.C. § 2254. The amended petition was dismissed with leave to amend
17 and petitioner has filed a second amended petition.

18 **BACKGROUND**

19 Petitioner was sentenced to 56 years to life in prison after being found guilty of
20 first-degree murder. *People v. Wyatt*, No. A144872, 2018 WL 1633816, at *5 (Cal. Ct.
21 App. April 5, 2018). His appeals were denied by the California Court of Appeal and
22 California Supreme Court. Docket No. 1 at 3. A pro se habeas petition to the California
23 Supreme Court was also denied. Docket No. 19 at 7-19.

24 In the California Court of Appeal petitioner contended that: (1) there was
25 insufficient evidence of premeditation and deliberation for first degree murder; (2) the
26 court erroneously admitted evidence of his prior conviction for voluntary manslaughter;
27 (3) the court should have instructed the jury not to use the evidence of the prior homicide
28 unless it made a preliminary finding that the homicide was committed with malice; (4) the
prosecutor committed misconduct by saying that manslaughter was “murder with an

1 excuse;" and (6) cumulative error. *Wyatt*, 2018 WL 1633816, at *1. The claims
2 presented in the pro se petition to the California Supreme Court are difficult to understand
3 but involve ineffective assistance of counsel. Docket No. 19 at 7-19.

4 **DISCUSSION**

5 **STANDARD OF REVIEW**

6 This court may entertain a petition for writ of habeas corpus "in behalf of a person
7 in custody pursuant to the judgment of a State court only on the ground that he is in
8 custody in violation of the Constitution or laws or treaties of the United States." 28 U.S.C.
9 § 2254(a); *Rose v. Hodges*, 423 U.S. 19, 21 (1975). Habeas corpus petitions must meet
10 heightened pleading requirements. *McFarland v. Scott*, 512 U.S. 849, 856 (1994). An
11 application for a federal writ of habeas corpus filed by a prisoner who is in state custody
12 pursuant to a judgment of a state court must "specify all the grounds for relief available to
13 the petitioner ... [and] state the facts supporting each ground." Rule 2(c) of the Rules
14 Governing § 2254 Cases, 28 U.S.C. § 2254. "[N]otice' pleading is not sufficient, for the
15 petition is expected to state facts that point to a 'real possibility of constitutional error.'" Rule 4 Advisory Committee Notes (quoting *Aubut v. Maine*, 431 F.2d 688, 689 (1st Cir.
16 1970)).

17 **LEGAL CLAIMS**

18 The first two petitions were dismissed with leave to amend because it was not
19 entirely clear the claims petitioner had presented. Liberally construing the second
20 amended petition, petitioner asserts that: (1) the trial court erred by failing to instruct the
21 jury on self-defense and imperfect self-defense; (2) there was insufficient evidence of
22 premeditation and deliberation for first degree murder; and (3) ineffective assistance of
23 counsel for failing to object to improper jury instructions and failing to present a claim of
24 self-defense. These claims are sufficient to require a response. If these are not the
25 claims petitioner wishes to proceed with, he must inform the court within fourteen-days.
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CONCLUSION

1. All claims are dismissed except the claims discussed above. If these are
2 not the claims petitioner wishes to proceed with, he must inform the court within
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fourteen-days.

2. The clerk shall serve by regular mail a copy of this order and the petition
3 (Docket No. 19) and all attachments thereto on respondent and respondent's attorney,
4 the Attorney General of the State of California. The clerk also shall serve a copy of this
5 order on petitioner.

3. Respondent shall file with the court and serve on petitioner, within fifty-six
4 (56) days of the issuance of this order, an answer conforming in all respects to Rule 5 of
5 the Rules Governing Section 2254 Cases, showing cause why a writ of habeas corpus
6 should not be granted. Respondent shall file with the answer and serve on petitioner a
7 copy of all portions of the state trial record that have been transcribed previously and that
8 are relevant to a determination of the issues presented by the petition.

If petitioner wishes to respond to the answer, he shall do so by filing a traverse
with the court and serving it on respondent within twenty-eight (28) days of his receipt of
the answer.

4. Respondent may file a motion to dismiss on procedural grounds in lieu of
5 an answer, as set forth in the Advisory Committee Notes to Rule 4 of the Rules
6 Governing Section 2254 Cases. If respondent files such a motion, it is due fifty-six (56)
7 days from the date this order is entered. If a motion is filed, petitioner shall file with the
8 Court and serve on respondent an opposition or statement of non-opposition within
9 twenty-eight (28) days of receipt of the motion, and respondent shall file with the court
10 and serve on petitioner a reply within fourteen (14) days of receipt of any opposition.

5. Petitioner is reminded that all communications with the court must be
served on respondent by mailing a true copy of the document to respondent's counsel.
Petitioner must keep the court informed of any change of address and must comply with
the court's orders in a timely fashion. Failure to do so may result in the dismissal of this

1 action for failure to prosecute pursuant to Federal Rule of Civil Procedure 41(b). See
2 *Martinez v. Johnson*, 104 F.3d 769, 772 (5th Cir. 1997) (Rule 41(b) applicable in habeas
3 cases).

4 **IT IS SO ORDERED.**

5 Dated: March 4, 2019



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8 PHYLLIS J. HAMILTON
9 United States District Judge
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